HONOURABLE MS JUSTICE G. ROHINI

WRIT PETITION No. 17528 of 2007

Date: 24th August 2007

Between:

S.Akthar Basha,
Ganigalli, Kurnool and others.

.....Petitioners

and

The Government of India,
Rep by its Deputy Secretary, Ministry of Shipping,
Road Transport and Highways
(Dept of Road Transport and Highways),
New Delhi and other.

.....Respondents.

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ORDER:

The petitioners, nine in number claim to be the owners of different plots situated in Survey No.430/C2 of Kallur, Kurnool Municipal Corporation. It is stated that having constructed shops and residential houses on the said plots of the petitioners have been in possession and enjoyment of the same by paying the property tax. While so the 1st respondent issued a notification dated 24-11-2006 under Section 3A (1) of the National Highways Act, 1956 (for short 'the Act') proposing to acquire the land for widening of National Highway No.1 from Km.203.002 to Km.293.000 in Kurnool District. It is alleged that since the said notification did not disclose the names of the persons likely to be affected and particularly since the notification was not published in prominent vernacular local newspapers, the petitioners could not file their objections to the proposed acquisition. Consequently, the 1st respondent issued notification dated 9-10-2006 under

Section 3D (1) and Section 3D (2) of the Act 1956, which contained the names of the petitioners as the owners/interested persons. It is alleged that without conducting proper enquiry as required under Section 3G of the Act, the 2nd respondent passed an award dated 16-6-2007.

Challenging the said award this writ petition is filed contending *inter alia* that the award is contrary to law apart from being violative of the principles of natural justice.

It is alleged that in the award proceedings though the petitioners had brought to the notice of the 2nd respondent about the existing structures on their respective plots, the 2nd respondent did not consider the said aspect and passed the award only in respect of the plots. It is contended that since the petitioners are entitled for compensation not only to the plots but also for the existing structures, the impugned award, which was passed without determining the damage caused to the structures is arbitrary and illegal.

At the out set, it is to be noted that Section 3G (5) of the Act specifically provides that, if the amount determined by the competent authority is not acceptable to either of the parties on an application, the amounts shall be determined by the arbitrator to be appointed by the Central Government. Section 3G (6) provides that the

Arbitration and Conciliation Act 1996 shall apply to every arbitration under the Act.

In the light of the said alternative remedy provided under the Act, the learned counsel for the respondent contended that the petitioners cannot maintain this writ petition under Article 226 of the Constitution of India.

However, the learned counsel for the petitioners vehemently contended that the impugned award which was passed without taking into consideration any of the aspects specified under Sub-section (7) of Section 3G of the Act was *ex facie* illegal and at any rate since the award was passed without conducting survey of the existing structures, as required under law, notwithstanding the availability of the appropriate alternative remedy, the petitioners can maintain this writ petition.

I am unable to agree with the said submission. As could be seen the matter involves several disputed questions of facts and moreover since the petitioners have participated in the award enquiry and raised their objections, in case the impugned award is not acceptable, it is for them to avail the remedy provided under the Act.

Without exhausting such alternative statutory remedy, the petitioners cannot straightaway maintain this writ petition.

Accordingly, granting leave and liberty to the petitioners to avail the alternative remedy, the writ petition is dismissed. No costs.

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(G.ROHINI, J)

Date:24th August 2007

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